

<b>IN RE: AMENDMENT OF IDAHO</b>	)	
<b>RULES OF CIVIL PROCEDURE</b>	)	<b>ORDER AMENDING RULES</b>
<b>(I.R.C.P.) 26(b)(4)(C), 30(b)(7), 35(a), 35(b),</b>	)	
<b>45(b), 57, and 60(b)</b>	)	
_____	)	

The report of the annual meeting of the Civil Rules Advisory Committee having been submitted to the Court, recommending changes in the content and substance of the Idaho Rules of Civil Procedure, and the Court having considered the same;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Rules of Civil Procedure as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 26(b)(4)(C) be, and the same is hereby, amended to read as follows:

**Rule 26(b)(4)(C). Fees of expert - Apportionment.**

Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule, and, in the event discovery is obtained by deposition under (b)(4)(A)(i) of this rule, the party seeking discovery shall pay the expert a reasonable fee for time spent testifying at said deposition; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule, the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

2. That Rule 30(b)(7) be, and the same is hereby, amended to read as follows:

**Rule 30(b)(7). Depositions by conference telephone calls.**

The parties may stipulate in writing or the court may upon motion order that a deposition may be taken by telephone. For purposes of this rule and rules 28(a), 37(a) (1), 37(b) (1) and Rule ~~45(d)-(1)~~ 45(f)(1), a deposition taken by telephone is taken in the state, territory or insular possession and at the place where the deponent is to answer questions propounded to the deponent.

3. That Rule 35(a) be, and the same is hereby, amended to read as follows:

**Rule 35(a). Physical and mental examination of persons.**

When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the parties by stipulation or the court in which the action is pending may order the party to submit to a physical or mental examination by a physician, or a qualified mental health professional as defined in section 6-1901, Idaho Code, excluding nurses, if the mental, emotional, or psychological condition of a party is at issue, or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination, including any tests or procedures to be performed, and the person or persons by whom it is to be made performed. Upon giving of reasonable notice to the other parties, the party being examined or the person having custody or legal control of the person being examined, shall have the right to have a representative of his or her choice present.

4. That Rule 35(b) be, and the same is hereby, amended to read as follows:

**Rule 35(b). Report of examining physician.**

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of a detailed written report of the examining physician setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, and provide access to all other writings or recordings created by the examiner or the party including the originals of forms and test score sheets, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude the examiner's testimony if offered at the trial.

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5. That Rule 45(b) be, and the same is hereby, amended to read as follows:

**Rule 45(b). Subpoena for production or inspection of documents, electronically stored information or tangible things, or inspection of premises.**

~~If the subpoena is for a party to attend a deposition, the scope and procedure shall comply with Rule 34, and the party must be allowed at least 30 days to comply.~~

(1) ~~The~~A subpoena to attend a deposition, trial or hearing may ~~also~~ command the

person to whom it is directed to produce or permit inspection and copying of the books, papers, documents, electronically stored information or tangible things designated therein. If the subpoena is for a party to attend a deposition, the scope and procedure shall comply with Rule 34, and the party must be allowed at least 30 days to comply.

(2) A subpoena to command a person who is not a party to produce or to permit inspection and copying of documents, electronically stored information, or tangible things, or to permit inspection of premises may be served at any time after commencement of the action. Unless otherwise ordered by the court, the ~~The~~ party serving the subpoena shall serve a copy of the subpoena on the opposing party at least seven (7) days prior to service on the third party. The party serving the subpoenas shall pay the reasonable cost of producing or copying the documents, electronically stored information or tangible things. Upon the request of any other party and the payment of reasonable costs, the party serving the subpoena shall provide to the requesting party copies of all documents obtained in response to the subpoena.

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6. That Rule 57 be, and the same is hereby, amended to read as follows:

**Rule 57. Declaratory judgments.**

(a) The procedure for obtaining a declaratory judgment pursuant to the statutes of this state, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

(b) In an action seeking declaratory judgment as to coverage under a policy of insurance, any person known to any party to have a claim against the insured relating to the incident that is the subject of the declaratory action shall be joined if feasible.

7. That Rule 60(b) be, and the same is hereby, amended to read as follows:

**Rule 60(b). Mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, grounds for relief from judgment or order.**

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment

should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) ~~and (6)~~ not more than six (6) months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. Such motion does not require leave from the Supreme Court, or the district court, as the case may be, as though the judgment has been affirmed or settled upon appeal to that court. This rule does not limit the power of a court to: (i) entertain an independent action to relieve a party from a judgment, order or proceeding, or (ii) to set aside, as provided by law, within one (1) year after judgment was entered, a judgment obtained against a party who was not personally served with summons and complaint either in the state of Idaho or in any other jurisdiction, and who has failed to appear in said action, or (iii) to set aside a judgment for fraud upon the court.

IT IS FURTHER ORDERED, that this order shall be effective on the first day of July, 2008.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rule by lining through them is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through shall not be considered a part of the permanent Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 4th day of April, 2008.

By Order of the Supreme Court

\_\_\_\_\_/s/\_\_\_\_\_  
Daniel T. Eismann  
Chief Justice

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen W. Kenyon, Clerk